OIPE IAP79 NOV 07 2005 PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Group Art Unit: 3752
DOUGLAS SWINGLEY	Examiner: Hook, James
Application No.: 10/631,382	
Filed: July 30, 2003	
For: CPVC DRAIN WASTE AND VENT FITTING	

SECOND DECLARATION OF GREGORY PEAK UNDER 37 C.F.R. § 1.132

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

1. I, Gregory Peak, declare that I am Director of Technical Services for Spears Manufacturing Company, the assignee of the present patent application (U.S. Patent Application Serial No. 10/631,382). I have been Director of Technical Sales Services since 1994. Prior to that date, I was the manager of the Technical Services Department for about five years. Prior to that, I worked since 1986 as the product manager for Spears Manufacturing Company.

2. In my declaration dated January 27, 2005, I stated that "Spears Manufacturing Company has been selling CPVC fittings and pipe for DWV Service for a little more than three years." I have since that time reviewed the records of the Spears Manufacturing Company with respect to the first sale of CPVC fittings and pipe by Spears and have determined that this statement was inaccurate. Spears' records indicate that Spears' first order of CPVC pipe, which is sold together with the CPVC fittings, was

not placed with Spears' supplier until August 20, 2002, and that such pipe was received on September 23, 2002. Spears' CPVC Drain, Waste and Vent ("DWV") fittings are always sold together with CPVC pipe as a complete system. CPVC DWV systems therefore were not sold prior to September 23, 2002.

3. I am familiar with the knowledge of those of ordinary skill in the design and construction of DWV systems. This knowledge comes from my continuous working with engineers and technicians employed by Spears Manufacturing Company, by frequent working with outside engineers and contractors regarding DWV products and projects, by frequent interaction with industry technical people at trade conferences and trade shows and by participation on ASTM committees.

4. CPVC DWV fittings and pipes are comparable in price to other polymer-based DWV fittings and pipes for corrosive waste systems, such as those made from polypropylene. Therefore, it is my belief that the commercial success of Spears' CPVC DWV fittings and pipes is due to their advantageous features and not to the price of the fittings themselves.

5. With regard to DWV fittings and pipes made from polyolefin, the problems associated with the installation of such DWV fittings and pipes in corrosive waste disposal systems were evident from the very beginning of the use of such systems. These problems include the need for a device to heat and fuse such pipes and fittings during installation, which is cumbersome and requires special equipment. Such special equipment is prone to break down periodically, and the repair of this equipment requires the skills of specialists who are not readily available.

6. I have reviewed the Office Action dated May 3, 2005 in the present application and the Thomas patent reference (U.S. Patent Publication No. 2003/0056826). Claim 14 of the present application has been rejected as being anticipated by this reference on the ground that it discloses a combination of a pipe and a fitting made of CPVC and used in a pressure, Hot and Cold water application.

7. The Thomas reference discloses Polyvinyl Chloride (PVC) pipe for the drain pipes and copper pipes for the water supply pipes, extensions and other water carrying pipes (paragraph 39 on page 3). The only reference to the use of CPVC in the Thomas reference, in paragraph 39, is the following: "However, it should be understood that any material that meets local building codes can be substituted for PVC and/or copper, and still be within the spirit of the disclosure. For example, chlorinated polyvinyl Chloride (CPVC), Polybutylene or stainless steel can be used in place of copper and cast iron or copper can be used in place of PVC, when local building codes permit."

8. The CPVC plumbing referred to in the Thomas reference is used as a substitute for copper for water pipes, i.e. pressure pipes, and not for DWV plumbing. DWV plumbing is not directly connected to pressure pipes.

9. The Thomas reference does not suggest that CPVC can be substituted for PVC for use in DWV pipes and fittings. Although the Thomas reference does mention that "any material that meets local building codes can be substituted for PVC," those in the trade are well aware that local building codes at the time the present application was filed did not list CPVC DWV fittings as a substitute for PVC DWV fittings. Most local building codes are based on uniform codes promulgated by trade bodies and other entities such as the International Association of Plumbing and Mechanical Officials, Building Officials and Code Administrators International Inc., Southern Building Code Congress International Inc., and the International Code Council. I am personally aware of the uniform building codes used by a number of localities, including the UPC (Uniform Plumbing Code), UBC (Uniform Building Code), UMC (Uniform Mechanical Code), UFC (Uniform Fire Code), and international codes including IBC, IPC, IMC and IFC, and none of these list such a substitution.

I declare under penalty of perjury that the foregoing is true and correct, and that if called to testify thereto, I could and would so testify. All of the data provided and any statements made in this declaration are believed to be true. I further declare that I

understand that willful false statements and the like are punishable by fine or imprisonment or both (18 U.S.A. § 1001) and may jeopardize the validity of the application or any patent issuing thereon.

Executed this 26th day of October, 2005, at Sylmar, California.

Gregory Peak